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ROBB, Judge

Case Summary and Issues

Following a bench trial, Gladys Tobias appeals the trial court's judgment awarding her \$9,044.54 for overpaid rent on a piece of real estate the trial court found was owned by Margaret and Thomas Mannella. On appeal, Tobias argues that the trial court should have awarded her a portion of the profit made by the Mannellas when they sold the property, that the trial court improperly relied on the statute of frauds in rendering its judgment, and that the trial court improperly found that the parties' status and rights regarding the property were governed by a written lease. The Mannellas also raise the issue of whether Tobias is barred from arguing that she was an owner of the property based on the trial court's previous order evicting her from the property. Concluding Tobias is not barred from making her argument, but that the trial court's judgment is not clearly erroneous, we affirm.

Facts and Procedural History

Matthew Swierczynski is Margaret's brother.¹ Sometime in 1997 or 1998, Swierczynski, who had recently emerged from bankruptcy, contacted Margaret and asked for her help in securing a place for him and Tobias, his girlfriend,² to live. Swierczynski eventually pinpointed a parcel of real estate located in Whiting, Indiana (the "Property"). Swierczynski planned to live on part of the Property and operate a business out of another part. On March 4, 1998, the Mannellas purchased the Property. On March 24, 1998, the warranty deed was recorded with the Lake County Recorder. The Property was titled to the

¹ Swierczynski is not a party to this appeal, and did not appear at any point in the proceedings below.

² Tobias and Swierczynski are now married.

Mannellas, who paid \$19,189.53 of their own money, and obtained a mortgage from Calumet National Bank (the “Bank”) for \$78,400. Thomas and Margaret testified that the Mannellas purchased the Property as an investment. Margaret also indicated that she was motivated by a desire to help her brother have a place to live. According to Tobias, however, the Mannellas had purchased the Property pursuant to an oral agreement between Swierczynski and Margaret under which the Mannellas “would purchase and do the financing for the property and hold the title, and [Tobias and Swierczynski] would pay all payments, and when payments were completed that the property would be deeded to [Tobias and Swierczynski].” Transcript at 92.

On April 1, 1998, Margaret and Tobias entered into a lease agreement (the “Lease”), under which they agreed that Tobias would occupy the Property for thirty-six months, beginning on April 1. Margaret testified that the parties entered into the Lease because the Bank told the Mannellas that it needed a guaranty that they had tenants for the Property. The Lease indicated that Tobias would pay \$750 per month to Margaret at the Mannellas’ address in Pewaukee, Wisconsin. The Lease also indicated that Tobias would pay fifty percent of the property taxes and assessments, and all of the utilities. However, instead of paying \$750 to the Mannellas, Swierczynski and Tobias made monthly payments to the Bank in amounts of roughly \$1,100, the amount the Mannellas were required to pay the Bank under their mortgage.

Sometime in 2003 or 2004, a dispute arose between the parties, and Swierczynski and

Tobias failed to make payments to the Bank.³ The Mannellas attempted to contact Swierczynski and Tobias to resolve the issue, but were unsuccessful. The Mannellas then issued a Notice Terminating Tenancy to Tobias on December 24, 2003, requiring Tobias to vacate the premises by January 31, 2004, and filed a Petition for Eviction on February 9, 2004, alleging that Tobias had breached the Lease by failing to pay rent. On March 30, 2004, the trial court held an Ejectment Possession hearing and issued a Possession Order, in which it ordered Tobias to vacate the Property by May 31, 2004. The trial court set a hearing for June 22, 2004, to determine back rent and damages. This hearing was continued to August 3, 2004. On July 20, 2004, Tobias filed a Counterclaim, seeking damages for unjust enrichment and for repayment of money Tobias claimed she spent on improvements to the Property and excess rent paid. In this Counterclaim, Tobias alleged that she had advanced part of the purchase price for the Property and that she was to be reimbursed for said advancement. On this same date, Tobias filed an Answer to Petition for Eviction and a Motion to Transfer, which was granted. On January 25, 2005, the Mannellas sold the Property, making a profit of roughly \$95,000. On March 21, 2005, the Mannellas filed their response to Tobias's Counterclaim, denying the allegations in Tobias's Counterclaim. On May 4, 2007, the trial court conducted a bench trial. On May 24, 2007, the trial court issued its judgment, along with findings of fact.

The trial court initially discussed the statute of frauds, and its application to this case,

³ Although there seems to be some disagreement between the parties on this point, the trial court found: "July of 2003, [Tobias] made no payment. August and September 2003, [Tobias] paid the sum of \$1,200.00 each month. January and February 2004, [Tobias] paid the sum of \$1,200.00 each month." Appellant's Appendix. at 8.

and found that “the oral agreement of the parties, if it existed, would clearly fall under the statute of frauds since it was an agreement for the conveyance of real estate.” Appellant’s App. at 5. However, the trial court went on to find that “in this case, there is another written document in evidence which clearly sets out the parties’ status and that is the lease which was prepared by [Tobias] or her husband and presented to the Plaintiff, Mrs. Mannella, which she and [Tobias] then executed,” and that “[s]aid written document clearly establishes the status of the parties as the [Mannellas] being the landlord and [Tobias] being the tenant.” Id. at 6-7. The trial court then concluded that “since the parties themselves have already established their legal relationship to one another, the Court need not address that issue further, and any claim of [Tobias] as to the legal interest in said real estate other than that set out in the lease and her claim for any part of the profits from the sale thereof must fail.” Id. at 7. The trial court then concluded that Tobias’s claim for reimbursement for improvements made to the Property must fail, as Tobias did not obtain consent from the Mannellas as required in the Lease.⁴ Finally, the trial court found that Tobias had been paying rent in excess of the amount indicated in the Lease, and determined that Tobias had exceeded her total obligation under the Lease by \$9,044.54, and awarded her a judgment in that amount. Tobias now appeals.

⁴ The Lease states that tenants shall not make any improvement to the Property at a cost of more than \$500 without obtaining consent from the landlord.

Discussion and Decision⁵

I. Res Judicata, Waiver and Estoppel

The Mannellas argue that Tobias either has waived or is estopped from asserting her claim that she was an owner, and not a mere tenant, of the Property based on the trial court's Possession Order, which implicitly found that Tobias was a tenant. This argument leads to a discussion of the unusual procedure followed in this case. The Mannellas filed their Petition seeking ejectment and damages on February 13, 2004. The trial court then held a hearing, at which all parties appeared,⁶ on March 30, 2004. Following this hearing, the trial court issued an order stating,

The Defendant(s) is (are) ordered to vacate the property by no later than May 31, 2004, and to return possession of the property to the Plaintiff(s).

Although this order of possession is final, the court must still determine if any rent, damages, fees or costs may yet be owed by the Defendant(s) to the Plaintiff(s). Therefore, the Plaintiff(s) and the Defendant(s) are ordered to return to court for a hearing on Tuesday, June 22, 2004, at 1:00 pm. If a Defendant fails to appear at the hearing, an order requiring that Defendant to pay [sic] the Plaintiff(s) for rent, damages, fees and costs may be entered in that Defendant's absence.

Appellant's App. at 168. On June 22, 2004, the parties agreed to continue the damages hearing until August 3, 2004. Also on this date, counsel filed an appearance for Tobias. On July 27, 2004, Tobias filed an answer, counterclaim, and motion to transfer. On March 28, 2005, the case was transferred and a bench trial was held on May 4, 2007.

Although the Possession Order purports to be a final order, it does not appear to meet

⁵ We held oral argument in this case on April 7, 2008, in the Lake Superior Court, Civil Division 1. We thank counsel for both parties for their advocacy and extend our gratitude to the Lake Superior Court judges and staff and the Lake County Bar Association for their hospitality.

any of the requirements of Indiana Appellate Rule 2(H), which indicates a judgment is final if:

- (1) it disposes of all claims as to all parties;
- (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;
- (3) it is deemed final under Trial Rule 60(C);
- (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
- (5) it is otherwise deemed final by law.

We have previously indicated that a judgment is not final if it does not determine damages. See State v. Young, 855 N.E.2d 329, 333 (Ind. Ct. App. 2006); First Fed. Sav. & Loan Ass’n of Gary v. Stone, 467 N.E.2d 1226, 1231 (Ind. Ct. App. 1984) (“[A] judgment which fails to determine damages is not final.”), trans. denied. Further, the Possession Order neither expressly states, pursuant to Trial Rule 54(B) or 56(C), that “there is no just reason for delay,” nor expressly enters judgment “as to less than all the issues, claims or parties.” See Cincinnati Ins. Co. v. Davis, 860 N.E.2d 915, 921 (Ind. Ct. App. 2007) (noting that without this “magic language,” an order will not become final under these rules). Sections 3 and 4 do not apply to this case, and research has disclosed no indication that a possession order that does not determine damages is final as a matter of law. Therefore, we conclude that the purported “final” Possession Order was not in fact final.

“We have long and consistently held a trial court has inherent power to reconsider, vacate, or modify any previous order so long as the case has not proceeded to final

⁶ It is not clear whether Tobias was represented by counsel at this hearing.

judgment.” Haskell v. Peterson Pontiac GMC Trucks, 609 N.E.2d 1160, 1163 (Ind. Ct. App. 1993). Because the case had not proceeded to final judgment, res judicata did not bar Tobias from later arguing that she was not a tenant. See In re Sheaffer, 655 N.E.2d 1214, 1217 (Ind. 1995) (“For principles of res judicata to apply, there must have been a final judgment on the merits.”).

Instead, the trial court’s Possession Order constitutes an interlocutory order appealable as of right. See Ind. App. Rule 14(A)(4) (indicating orders “[f]or the sale or delivery of the possession of real property” are appealable as of right). In order to timely appeal such an order, a party must file a notice of appeal within thirty days of the entry of the order. Ind. App. Rule 14(A). Tobias failed to appeal this order. The Mannellas argue that Tobias’s failure to appeal this order constitutes waiver of the issue of whether she was a tenant, as opposed to an owner of the Property, or results in Tobias being estopped from making this argument. However, “there is no requirement that an interlocutory appeal be taken, and [a party] may elect to wait until the end of litigation to raise the issue on appeal from a final judgment.” Georgos v. Jackson, 790 N.E.2d 448, 452 (Ind. 2003); see also Bojrab v. Bojrab, 810 N.E.2d 1008, 1014 (Ind. 2004) (“[E]ven though an interlocutory order may be appealable as of right under Appellate Rule 14(A)(2), there is no requirement that an interlocutory appeal be taken.”).

Also, we have no transcript of the hearing on the Mannellas’ eviction petition. We are therefore unable to determine what arguments Tobias made at this hearing. In sum, the record does not support the Mannellas’ arguments that Tobias waived, or is barred by res judicata or collateral estoppel from arguing that she was an owner, and not merely a tenant,

of the Property. However, we note the numerous inconsistencies between Tobias's position in her pleadings, in which she sought compensation for money advanced and for improvements made to the Property, and her argument at trial, where for the first time she alleged the existence of an oral agreement regarding the Property's ownership.⁷

II. Statute of Frauds

Tobias argues that the trial court "improperly injected the statute of frauds," appellant's brief at 9, and erroneously made it "an essential element of its decision," *id.* at 1. Initially, the trial court clearly did not rely on the statute of frauds as a basis for its judgment. The trial court discussed the statute of frauds, and found that "the oral agreement of the parties, if it existed, would clearly fall under the statute of frauds since it was an agreement for the conveyance of real estate." Appellant's App. at 6. The trial court then went on to discuss the legal principles of the part-performance exception to the statute of frauds. However, after this discussion, the trial court found that "since the parties themselves have already established their relationship to one another [in the Lease], the Court need not address that issue [of the statute of frauds] further." *Id.* at 7. The trial court went on to determine the parties' obligations under the Lease. At no point did the trial court find that the statute of frauds barred Tobias's claim.

Because it is clear that the trial court did not rely on the statute of frauds, we need not address the parties' arguments regarding whether the Mannellas waived the statute of

⁷ We also note that Tobias filed her counterclaim and answer to the Mannellas' petition for eviction well after the twenty-day time limit for filing responsive pleadings. *See* Ind. Trial Rule 6(C). Moreover, Tobias filed her answer after the trial court had held a hearing and issued a Possession Order on the Mannellas' petition. However, there is no indication in the record that the Mannellas objected to Tobias's late filing.

frauds defense or whether Tobias's part performance removed the alleged oral agreement from the statute of frauds.

III. The Written Lease

A. Standard of Review

It appears that the trial court entered findings along with its judgment sua sponte. Although the trial court was not required to enter such findings, they “offer this court valuable insight into the trial court’s rationale for its judgment and facilitate appellate review.” Estate of Troxal v. S.P.T., 851 N.E.2d 345, 347 (Ind. Ct. App. 2006), trans. denied. We “may affirm the judgment on any legal theory supported by the findings.” Mitchell v. Mitchell, 695 N.E.2d 920, 923 (Ind. 1998). Also, “the specific findings control only the issues they cover, while a general judgment standard applies to any issue not found by the court.” Hopper Res., Inc. v. Webster, 878 N.E.2d 418, 422 (Ind. Ct. App. 2007); see also Trial Rule 52(D) (“findings of fact with respect to issues upon which findings are not required shall be recognized as findings only upon the issues or matters covered thereby and the judgment or general finding, if any, shall control as to the other issues or matters which are not covered by such findings.”). “A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence.” State v. Hammans, 870 N.E.2d 1071, 1078 (Ind. Ct. App. 2007).

B. Validity of the Written Lease

Tobias argues the trial court’s finding that the parties’ relationship is governed by the Lease is clearly erroneous, and that the evidence instead indicate that the Lease was a sham. “When two parties enter into a sham contract, as between themselves, there is no contract and

the document is thus unenforceable.” Jamrosz v. Res. Benefits, Inc., 839 N.E.2d 746, 756 (Ind. Ct. App. 2005) (quoting Wallace v. Rogier, 182 Ind. App. 303, 307, 395 N.E.2d 297, 299 (1979)), trans. denied. “It is well settled that whatever the formal documentary evidence, the parties to a legal transaction may always show that they understand a purported contract to not bind them; it may, for example be a joke, or a disguise to deceive others.” Id. (quoting In re H. Hicks & Son, 82 F.2d 277, 279 (2d Cir. 1936)). If a party can show by extrinsic evidence that parties to a written document “did not, at the time of its execution, intend it to be a contract . . . neither party [is placed] under any legal obligation.” Nice Ball Bearing Co. v. Bearing Jobbers, Inc., 205 F.2d 841, 845 (7th Cir. 1953), cert. denied, 346 U.S. 911 (1953).

Tobias relies on Wallace v. Rogier in arguing that the Lease was an unenforceable sham contract. In Wallace, the attorney “drew up the document only after making it clear to the persons present that it was not binding and not enforceable and would be used for the sole purpose of showing it to [a party’s] banker.” 182 Ind. App. at 305, 395 N.E.2d at 299. The trial court found “substantial evidence presented at trial from which we can conclude that neither party intended the document, at the time it was drafted and signed, to be a valid enforceable contract.” 182 Ind. App. at 308, 395 N.E.2d at 301. Here, Margaret testified that the parties entered into the Lease because the Bank told the Mannellas that it wanted proof that the Mannellas had a tenant. In a sense, this situation may seem similar to that in Wallace. However, Wallace is distinguishable first on the grounds that our standard of review required this court to accept as true the fact that the parties signed the document “on the understanding that the document was void and of no legal force.” 182 Ind. App. at 307,

395 N.E.2d at 300. Here, the trial court rejected Tobias's argument that the Lease was a sham, and instead found that the parties intended the Lease to be a binding agreement.⁸ Such a finding was supported by evidence, as both Thomas and Margaret testified that they purchased the Property for themselves as an investment, that Tobias and Swierczynski were to be mere tenants, and that the Lease was intended to set out the parties' rights.

We acknowledge that the evidence is conflicting as to whether the parties intended the Lease to be a binding contract. Margaret testified that the Lease was "put together to get the loan," and later clarified that the parties had always agreed that the Mannellas would own the property and rent it to Tobias and Swierczynski, but that she was "backed into" the dollar amount identified in the Lease. Tr. at 86. Little was elicited from Tobias regarding her intent as to the Lease, but Tobias did testify that she signed the Lease and that she personally had no agreement with either of the Mannellas regarding the purchase of the Property at the time she signed the Lease. Id. at 99-100. She further testified that Swierczynski had prepared the Lease and that she signed the Lease as a tenant. Id. at 103. Still, Tobias argues that the trial court's finding and judgment was not supported by the evidence and points to several circumstances in the record, including a letter written from Margaret to Swierczynski, the improvements made to the Property by Tobias and Swierczynski, and the non-compliance with terms of the Lease.

1. The Letter from Margaret to Swierczynski

⁸ As an appellate court, we interpret a trial court's findings liberally to support its judgment. In accordance with this principle, we interpret the trial court's statement that the Lease "clearly establishes the status of the parties," appellant's app. at 6-7, and that "the parties themselves have already established their legal relationship to one another," id. at 7, as finding that the parties had actually agreed to the terms in the Lease and intended the document to be binding.

Tobias argues that the Lease is an invalid “sham agreement” based primarily on a letter Margaret sent to Swierczynski in February 2002. This letter stated:

Matt –

Thom + I feel it would for the best [sic] if you found someone else to put your property’s title in.

We feel 30 days is a reasonable amount of time to begin a loan process.

We look forward to hearing from you regarding this matter.

Please do not procrastinate. The party’s over + you have threatened me for the last time. Handle it.

Marge

Appellant’s App. at 180. Tobias claims that in this letter, “Ms. Mannella affirmatively disavowed title in herself, her husband, and confirmed the parties’ intention and agreement that the Mannellas were title holders only for Tobias’ property.” Appellant’s Br. at 13. No testimony from Margaret was elicited as to the letter’s intended meaning, and Margaret testified merely that she had written the letter.

Initially, Tobias’s argument apparently assumes that Margaret had the power to unilaterally disavow title in property held by both Mannellas.⁹ However, spouses “have no separable interest in entireties property, therefore, a conveyance by one tenant is ineffective to pass legal title.” Wienke v. Lynch, 407 N.E.2d 280, 283 (Ind. Ct. App. 1980). “Merely owning property as tenants by the entirety does not ordinarily bind one spouse when the other has contracted with a third person, unless the contracting spouse is authorized, or the non-contracting spouse ratifies the act.” McIntosh v. Turner, 486 N.E.2d 565, 566 (Ind. Ct. App. 1985), reh’g denied, 489 N.E.2d 116, trans. denied. Whether the other spouse had given authority, or subsequently ratified or acquiesced to the agreement is generally a

⁹ The warranty deed for the Property indicates that the property was conveyed to both Thomas

question of fact. See Douglas v. Monroe, 743 N.E.2d 1181, 1187 (Ind. Ct. App. 2001) (indicating that the existence of an agency relationship is generally a question of fact); Beneficial Mortg. Co. of Ind. v. Powers, 550 N.E.2d 793, 796 (Ind. Ct. App. 1990) (holding that whether a spouse acquiesced to the other spouse's unilateral conveyance is generally a question of fact), trans. denied. No direct evidence indicates that Thomas ever ratified or acquiesced to any sort of agreement that Tobias and Swierczynski were to be the owners of the Property. Therefore, we disagree that Margaret could have unilaterally disavowed title as to her and her husband in the letter itself.

Tobias also claims that this letter is dispositive evidence of the parties' original intent that Tobias and Swierczynski be the owners of the Property, and that the Lease was therefore a "sham contract." Although Tobias makes much of this letter, at most it raises a question of fact as to the parties' true intent, and certainly does not compel a finding that the parties made the alleged oral agreement. Indeed, in a similar situation, we would not find it unusual for a landlord to tell a tenant something along the lines of "I will be inspecting your apartment next Tuesday." Clearly, the landlord is not indicating that the tenant owns the apartment merely because she referred to it as "your apartment."

The trial court was well aware of this letter and did not give it the same significance as does Tobias. The trial court did not find this letter persuasive enough to find that the alleged oral agreement occurred, but instead found the Lease to be a valid agreement. We are not in a position to reweigh the evidence on appeal, and defer to the trial court's assessment of the weight of this letter.

and Margaret. See Appellant's App. at 137.

2. Improvements to the Property

Next, Tobias claims that the fact that Tobias made improvements to the Property demonstrates “another sign of Tobias ownership.” Appellant’s Br. at 12. Tobias testified that she, Swierczynski, or her son-in-law purchased the improvements for the Property.¹⁰ Tr. at 97. Specifically, Tobias testified in regards to improvements, “There were certain plumbing repairs. There was [sic] roof repairs, a new furnace, a new air conditioner, and block windows in the second floor.” Id. at 93. Tobias calculates the cost of these improvements to be \$18,126.28. See Appellant’s Br. at 10. A review of the receipts admitted into evidence indicates that some of the improvements may be considered substantial. See Appellant’s App. at 196 (receipt for furnace and air conditioner for \$9,500); id. at 197 (receipt from “Bizik Glass Block Panels” for \$3,754). However, many of the receipts are for small, miscellaneous items, which are in no sense valuable or lasting improvements to the property. E.g., id. at 182 (receipt for \$49 worth of top soil); id. at 187 (receipt for staples and molding). It may be difficult to determine if these improvements would have been made in the absence of an oral agreement, as we do not know the circumstances surrounding the purchases. As Tobias and Swierczynski operated a business out of the Property, it may well be that it would have been a reasonable business decision for a tenant to make these improvements even realizing that the improvements would stay with a property in which they had no vested interest.

¹⁰ Tobias claims in her appellate brief that “Tobias totally paid for and improved the property. . . . The improvements were made by Ms. Tobias who supplied a new furnace, new windows, and other improvements.” Appellant’s Br. at 10. Tobias’s testimony clearly states that she made only some of the purchases. We urge counsel to accurately reflect the record.

The more fundamental problem with Tobias's argument regarding her repairs and improvements to the property is that the terms of the Lease do not support her argument that she would not have made them in the absence of the alleged oral agreement. The primary improvements made to the Property were a furnace, air-conditioner, and glass blocks. Under the Lease, "costs of maintenance and repair to the heating and air conditioning systems shall be paid by Tenant." Appellant's App. at 175.¹¹ Also, the Lease provides that the tenants "shall maintain the interior walls, ceilings, floors, windows, and doors." Id. The Lease also indicates that the Landlord is not responsible for maintaining the Property's exterior glass. Id. The Lease also permits tenants to remove any fixtures at their own expense. Id. at 170. Thus, the improvements made by Tobias and Swierczynski do not appear inconsistent with their status as tenants under the Lease.

3. Non-Compliance with Lease Terms

It appears that two provisions of the Lease were not followed. First, the Lease provides that the tenants shall pay \$750 per month for the first thirty-six months. After this initial period,

the monthly rental shall be an amount equal to the monthly rental paid during the original term multiplied by a fraction, the numerator of which is the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (All Cities) for the most recent available month as of the date of the beginning of the extended term and the denominator of which is the same index for the same month of the year in which the original term of the lease commences.

Id. at 169. The tenants were to be responsible for "fifty percent (50%) of all real property taxes and assessments that are assessed against the [Property]." Id. at 171. Additionally, the

¹¹ The Lease indicates that this provision is "[s]ubject to Landlord's covenant set forth in Paragraph

Lease provided that the tenants were responsible for paying the premiums for fire and extended coverage insurance. Id. at 172-73. Instead of making the payments as described in the Lease, Tobias and Sweirczynski made monthly payments of \$1,108.07 directly to the Bank. Of this payment, \$737.96 went to principal and interest, \$300.53 went to real estate taxes, and \$69.58 went to hazard insurance. Under the Lease, they were required to pay \$750, plus half of the \$300.53, plus the \$69.58. So, it appears that during the initial thirty-six-month period, they were paying roughly \$135 per month above the amount required by the Lease.¹² After this period, it appears that they were paying roughly \$70 more than the amount required by the Lease.¹³ Although we recognize that these payments were inconsistent with the terms of the Lease, we do not believe that these payments, ranging from six to twelve percent above the payments identified in the Lease, compel a conclusion that the parties did not intend the Lease to be a binding contract.

Second, the Lease provides that the tenant shall provide notice and obtain consent from the landlord before constructing any improvement or making alterations that cost more than \$500. Id. at 171. Tobias testified that she and Sweirczynski did not obtain consent from the Mannellas before making improvements. However, there is no indication that the Mannellas knew or consented to Tobias's non-compliance with this provision. We do not

2(d).” Id. However, the Lease contains no Paragraph 2(d).

¹² We recognize that the trial court's findings regarding the amount by which Tobias overpaid fail to take into account the facts that Tobias was required to pay the insurance premiums and that the rent was to increase after the initial three-year period. However, the Mannellas do not challenge the amount of the award to Tobias.

¹³ According to the Bureau of Labor Statistic's website, the index when the Lease commenced, in April 1998 was 162.5, and the index at the beginning of the extended term, in April 2001, was 176.9. See <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet>. Therefore, the rent for the months following the initial 36 would have been \$816.46 under the Lease.

believe the fact that Tobias failed to comply with this notice provision has any substantial bearing on the Mannellas' intent regarding the binding nature of the Lease.

4. Other Considerations

Although not necessary to our decision, we wish to comment on two additional points, which we believe help put the trial court's conclusion regarding the validity of the Lease into perspective.

First, Tobias overstates the apparent inequity suffered by her because of the trial court's refusal to enforce the alleged oral agreement and deny her a share in the profit made by the Mannellas. The evidence indicates that the Mannellas made an initial investment of \$19,189.53 and took out a loan in their own name for \$78,400. Appellant's App. at 139. Tobias and Swierczynski paid roughly \$80,000 to the bank over the course of roughly six years.¹⁴ Out of this amount, roughly \$20,000 went to the loan's principal. See id. at 143 (indicating that the original loan was for \$78,400 and that as of April 2004 the remaining balance was \$58,217). The remainder of these payments went to interest on the loan, real estate taxes, and hazard insurance. See id. at 141 (indicating that of the \$1,108.07 payments, \$737.96 goes to principal and interest, \$300.53 goes to real estate taxes, and \$69.58 goes to hazard insurance).

Although evidence exists that Tobias made improvements to the Property and, through the monthly payments, reduced the principal on the loan taken out by the Mannellas, we do not believe that any injustice has been committed on Tobias here. First, Tobias and

¹⁴ Tobias claims in her brief that they "made every mortgage, tax, and insurance payment." Appellant's Br. at 10. However, as the trial court found, and the evidence indicates, they missed several

Swierczynski made fewer than half the payments on the mortgage, which was to run through 2013, and had reduced the principal by only \$20,000 of the initial \$78,400. Also, Albert Minniti, a licensed real estate appraiser, testified at the damages hearing that someone could easily rent the Property for \$2,400 to \$3,000 per month. Tobias and Swierczynski paid roughly \$1,200 per month; as Minniti testified, “that’s a really good deal . . . [for] [t]he renter.” Tr. at 58. Therefore, Tobias had the benefit of using the Property for her residence and to operate a business for roughly six years at a rate below fifty-percent of the market value.

Second, we point out the difficulty of enforcing the alleged oral agreement, as Tobias’s testimony on its contents is vague. At one point, she testified that under the alleged oral agreement, the Property was eventually to be deeded to “us,” referencing Tobias and Swierczynski, but provides no other insight to the terms of the alleged oral agreement. See Tr. at 92. It would be difficult for a court to enforce the alleged oral agreement without more information as to its terms. For instance, Tobias’s description of the alleged oral agreement does not negate the possibility that the alleged oral agreement contained merely an option to purchase. As no evidence indicates that Tobias had exercised any option, she would have had no vested interest in the property at the time of the sale. See Haney v. Denny, 135 Ind. App. 317, 337, 193 N.E.2d 648, 654 (1963). Further, the record indicates that Tobias failed to make payments. Without more information regarding the alleged oral agreement, we would be hard pressed to determine the effect of this apparent breach. See, e.g., Millsaps v. Ohio Valley Heartcare, Inc., 863 N.E.2d 1265, 1272 (Ind. Ct. App. 2007) (holding where a

payments. Again, we urge counsel to accurately reflect the record.

party breached a contract it was precluded from enforcing the agreement against the other party), trans. denied. The trouble discerning the terms of this oral agreement, and indeed, determining whether or not one existed, highlight the purposes of the statute of frauds. See Coca-Cola Co. v. Babyback's Int'l, Inc., 841 N.E.2d 557, 567 (Ind. 2006) (“The underlying purpose of the Statue of Frauds is ‘to preclude fraudulent claims that would likely arise when the word of one person is pitted against the word of another.’” (quoting Brown v. Branch, 758 N.E.2d 48, 51 (Ind. 2001))); People's Outfitting Co. v. Wheeling Mattress Co., 67 Ind. App. 18, 118 N.E.2d 827, 828 (1918) (“In the administration of justice [the Statute of Frauds] prevents the rights of litigants from resting wholly on the precarious foundation of memory.”). We hasten to point out that the decisions of neither this court nor the trial court rest on the statute of frauds. However, the little information Tobias was able to provide regarding the alleged oral agreement also weighs against her credibility, and the trial court could properly have considered this factor in determining that the parties intended the Lease to be a binding agreement.

Conclusion

We conclude that the evidence submitted at trial supports the trial court's determination that the Lease was a valid agreement that defined the parties' rights with respect to the Property. Given our standard of review, we accept this determination and conclude that the trial court's judgment is not clearly erroneous.

Affirmed.

RILEY, J., and KIRSCH, J., concur.

